IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 917 OF 2006
IN
WRIT PETITION NO. 175 OF 2006

PRAMODINI DILIP SHIRODKAR AND 3 ORS., ... Applicants

Versus

EDC LIMITED, PANAJI, GOA. ... Respondents

Mr. M. S. Usgaonkar, Sr. Advocate with Mr. Iftikhar Agha,Advocate for the applicants.
Mr. N. Vaze, Advocate for the respondent.

Coram:- R. S. MOHITE, J.

Date:- 27th September, 2007

P.C.

Heard both sides. This is an application for vacating ad interim order dated 11.12.2006 passed by this Court in writ petition No.175/2006. On perusing the record, it appears that, the two Courts have come to the prima facie conclusion that an amount of Rs.60 Lacs which was borrowed by the respondents had been returned but wrongly misappropriated to another account of a company, the management of which has been taken over by the present respondent. Receipt of the money is admitted. It was sought to be contended that in fact the said amount was paid by third entity. The record indicates that payments have been made either by the main borrower or the guarantor. Be that as it may it does appear that the trial Court had granted two reliefs prayed for by the present respondents. Prayer (B) which was also granted was in the following terms :

"That pending the hearing and final disposal of the suit this Hon'ble Court be pleased to permit the plaintiffs to allow third parties to use the

factory premises in the said property as well as the plant and machinery described in the Exhibit F hereto respectively on compensation and such terms and conditions as this Hon'ble Court may deem fit by way of a temporary injunction."

Prayer (B) which was granted, permitted the applicant to allow third parties to use factory premises in the said property as well as plant and machinery described in Exh.F to the plaint. It is not disputed before me that the plant and machinery described in Exh.F to the plaint is in fact hypothecated property. It was also not proper to allow third party to use the factory premises which are also mortgaged and the plant and machinery described in Exh.F which are hypothecated. It is rightly contended that creating third party right on such property would prejudice the rights of the petitioner if ultimately suit is dismissed. The Senior Counsel appearing for the respondent states that they have not allowed any third party to use the factory premises as well as plant and machinery described in Exh.F. It is stated that the plant and machinery described in Exh.F exist in the factory premises in an intact condition without any third party rights thereon. In the circumstances, it is directed that prayer (B) of the application for grant of interim relief in the suit dated 21.1.2003 as granted by the trial Court is stayed. It is further directed that the applicants in this application will not create any third party rights and will not part with possession of the plant and machinery as described in Exh.F to the plaint and will maintain the same in good condition till the disposal of the suit. In view of the aforesaid directions, reliefs in forms of prayer (B) of the main Writ Petition which has been granted on ad interim basis in the main writ petition stands vacated. M.C.A. disposed off.

R. S. MOHITE, J.

SMA